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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,081	01/08/2001	Michael T. Rossi	A7842	5137

7590 12/13/2002

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EXAMINER

KNAUSS, SCOTT A

ART UNIT	PAPER NUMBER
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2874

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/755,081

Applicant(s)

ROSSI, MICHAEL T.

Examiner

Scott A Knauss

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 26-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 20-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-19, drawn to a method and device for adjusting a binder laylength, classified in class 385, subclass 110.
 - II. Claims 20-25, drawn to a fiber optic cable fiber, classified in class 385, subclass 100.
 - III. Claims 26-30, drawn to a buffer tube, classified in class 385, subclass 115.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions II and III have separate utility such as binding a group of fibers together (invention II) or placing fibers in bundles together (invention III). See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Brian Hannon on 11/25/02 a provisional election was made without traverse to prosecute the invention of group II, claims 20-25. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 1-19 and 26-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 20,21,23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,703,983 (Beasley, Jr).

Regarding claims 20,21,23 and 25, Beasley discloses the use of binder markings (column 4, lines 30-31) in order to mark a fiber optic cable core, the binders inherently being flexible to bind the cable, and having a feature, in this case a color (lines 32-34) which would inherently be physically detectable by a detection system, in this case a human visual system.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beasley, Jr. in view of U.S. 5,809,194 (Lovie).

Regarding claims 22 and 24, Beasley, as stated above, discloses the use of binder markings, but does not specify the use of fluorescent or the use of metallic/magnetic strips to mark the cable.

Lovie on the other hand, discloses the use of detectable markings such as metallic, magnetic or fluorescent paint which may be made anywhere on the cable core (see column 6, lines 21-26), thus providing fluorescent markings and metallic or magnetic strips in order to provide a detectable marking.

Therefore it would have been obvious to one of ordinary skill in the art to use the fluorescent, metallic, or magnetic markings as taught by Lovie as the binder markings of Beasley in order to provide highly detectable binder markings.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. 4,497,537 (Dench) discloses a detectable (visible) cable using a binder which is a plastic coated wire (metal strip) (see column 1, lines 64-66).

U.S. 5,345,525 (Holman et al), 5,165,003 (Carter), and U.S. 5,345,526 (Blew) each describe the use of colored binders.

U.S. 5,729,966 (Grulick) describes the use of marked binder tape (see column 8, lines 40-43)

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott A Knauss whose telephone number is (703) 305-5043. The examiner can normally be reached on 9-6 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (703) 308 - 4819. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0530.

Scott Knauss

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sak
December 9, 2002

A handwritten signature in black ink, reading "John D. Lee". The signature is written in a cursive style with a large, looping initial "J".